

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shakina Griffith	Team: Team # 1	CCRB Case #: 201300665	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 01/19/2013 10:00 AM	Location of Incident: inside the 115th Precinct stationhouse	Precinct: 115	18 Mo. SOL 7/19/2014	EO SOL 7/19/2014	
Date/Time CV Reported Tue, 01/29/2013 6:28 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 01/29/2013 6:28 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT James Lee	03259	930421	115 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Difilippi	14171	945177	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT James Lee	Force: SGT James Lee used physical force against § 87(2)(b) [REDACTED]	
B.SGT James Lee	Force: SGT James Lee used pepper spray against § 87(2)(b) [REDACTED]	

Case Summary

On January 29, 2013, § 87(2)(b) filed this complaint via the call processing system with the Civilian Complaint Review Board (CCRB) (encl.4a-b).

On January 19, 2013, at approximately 10:00 a.m., § 87(2)(b) was brought into the 115th Precinct stationhouse, located at 92-15 Northern Boulevard in Queens, following a Driving While Intoxicated (DWI) arrest. The following allegations resulted.

Allegation A- Force: SGT James Lee used physical force against § 87(2)(b)

Allegation B- Force: SGT James Lee used pepper spray against § 87(2)(b)

§ 87(2)(g)

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) year old Hispanic female who is 5'7", weighs 160 pounds, and has red hair and brown eyes.
- At the time of the interview, § 87(2)(b)

Arrest Photograph

§ 87(2)(b)'s arrest photograph showed a bruise on the right cheekbone (encl. 5a).

Statements to Medical Providers

On January 19, 2013, at § 87(2)(b) Hospital, § 87(2)(b) complained of pain to the right side of her face and to the right forearm due to a physical altercation with officers. § 87(2)(b) stated that an officer hit her in the face and threw her against a cell. § 87(2)(b) also stated that she was pepper-sprayed. § 87(2)(b) complained of eye pain as a result of the pepper-spray. On January 20, 2013, at § 87(2)(b) Hospital in Forest Hills, Queens, § 87(2)(b) stated that she was assaulted on January 19, 2013 and complained of pain to her right cheek and complained of a headache. (encl. 17a-s).

CCRB Statement

On February 5, 2013, § 87(2)(b) provided a phone statement (encl. 6a). On February 21, 2013, § 87(2)(b) was interviewed at the CCRB (encl. 7a-n). On March 1, 2013 and June 13, 2012, § 87(2)(b) answered follow-up questions (encl. 8a; 9a). Her statements are summarized below.

On January 19, 2013, at approximately 6:14 a.m., § 87(2)(b) was arrested at Northern Boulevard and Junction Boulevard for driving while intoxicated by PO Joseph Difilippi, who worked with PO Cesar Arceo, both of the 115th Precinct. § 87(2)(b) drank one five ounce cup of Red Bull and Hennessy and did not drink any other alcoholic beverages. She was taken to the Highway District 3 stationhouse, where she was given sobriety tests. After the tests were completed, § 87(2)(b) was transported to the 115th Precinct stationhouse.

At the stationhouse, PO Difilippi walked § 87(2)(b) to a holding cell and removed her handcuffs. § 87(2)(b) remained in the cell alone for approximately two hours.

Then PO Difilippi took § 87(2)(b) out of the holding cell and walked her to the front desk so she could be frisked. An officer, who was described as a white female in her mid-30s, with blonde hair and brown eyes, 5'6", 150, and in uniform, was instructed to frisk § 87(2)(b). That officer stood behind § 87(2)(b) and patted down § 87(2)(b) from her ankles to her bra straps. In her original complaint, § 87(2)(b) stated that a sergeant, who was identified via investigation as SGT James Lee of the 115th Precinct, and who was described as a slim Asian male with black hair and black eyes, 5'7" to 5'8", 41 years old, and in uniform, patted her down. SGT Lee sat behind the desk and gave § 87(2)(b) a dirty look. § 87(2)(b) said to SGT Lee, "Why are you looking at me like that? It happens to everybody. Everybody has a bad day." SGT Lee said, "Shut up. Just shut up." § 87(2)(b) said, "Don't speak to me like that because I'm not an animal. I didn't harm anybody, so don't speak to me like that." SGT Lee walked around the desk, grabbed § 87(2)(b)'s right bicep with both hands, put pressure around her bicep, and said, "Didn't I tell you to shut up?" § 87(2)(b) told SGT Lee that he was hurting her. SGT Lee continued to tell § 87(2)(b) to shut up. SGT Lee pulled § 87(2)(b) toward him and pulled her to the holding cell. § 87(2)(b) did not resist. While still holding her bicep, pushed § 87(2)(b) against the cell. The right side of § 87(2)(b)'s face made contact with the cell. At this time, SGT Lee still held § 87(2)(b)'s bicep. § 87(2)(b) stepped back approximately two inches from the cell and told SGT Lee that her face hit the cell. SGT Lee said, "Just shut up." Still holding § 87(2)(b)'s right arm, SGT Lee pushed § 87(2)(b) onto the cell, causing the left side of her face to make contact with the cell. § 87(2)(b) pulled away from SGT Lee. § 87(2)(b) again said that her face made contact with the cell. SGT Lee faced § 87(2)(b) and stood approximately one inch away from her body. SGT Lee told § 87(2)(b) to shut up and asked officers, § 87(2)(b) did not know who, to retrieve the pepper spray. SGT Lee pushed § 87(2)(b) away from him and into the holding cell. There were no other individuals in that holding cell. § 87(2)(b) shielded her eyes with her right arm. § 87(2)(b) did not see which officer gave the pepper spray to SGT Lee. SGT Lee held § 87(2)(b)'s arm down, and with his index finger on top of the container and the rest of his fingers around the container, pepper sprayed § 87(2)(b) in the face. § 87(2)(b) did nothing with her body right before she was pepper-sprayed and did not have physical contact with SGT Lee. As he pepper sprayed § 87(2)(b) SGT Lee moved his hand left and right. The stream of pepper spray that came out of the container was constant. The pepper spray made contact with § 87(2)(b)'s face and chest area of her jacket. § 87(2)(b) felt a burning sensation on her eyes and face. § 87(2)(b) thought the pepper spray container was blue with white letters, but could not further describe the size or shape of the container.

Approximately one minute later, SGT Lee pepper sprayed § 87(2)(b) again. As § 87(2)(b) was being pepper sprayed the second time, she covered her face. Then SGT Lee exited the cell. An unknown amount of officers, who § 87(2)(b) was unable to identify, stood outside the cell and watched SGT Lee, but did not interact with § 87(2)(b). § 87(2)(b) yelled that she needed to be taken to the hospital. Approximately thirty minutes to one hour later, four white males, who wore dark blue long-sleeved shirts with pockets on the chest, black carpenter pants with pockets on the side, black army boots, and black baseball caps, and who § 87(2)(b) described as the "Ninja Turtles", approached § 87(2)(b) in the cell. § 87(2)(b) did not see "NYPD" written on any of the males' clothing. § 87(2)(b) was asked if she wanted to be a "tough girl" and § 87(2)(b) said she was not trying to cause trouble. § 87(2)(b) was told that she would get into trouble if she played "tough girl." At approximately 9:00 a.m., the four males

handcuffed § 87(2)(b) and walked her to an ambulance. An officer, whose name “Julie,” was obtained while speaking at the hospital, and who was later identified via investigation as PO Julie-Ann Stapleton of the 115th Precinct, was described as a light-skinned black female with black hair and black eyes, 5’7”, 150, and in uniform. PO Stapleton accompanied § 87(2)(b) to § 87(2)(b) Hospital. While at the hospital, § 87(2)(b) received a CAT scan and wet towels for her face.

§ 87(2)(b) was taken back to the 115th Precinct stationhouse at approximately 12:00 p.m. on January 20, 2013. § 87(2)(b) was eventually taken to Queens Central Booking and she was charged with DWI and assault of an officer. § 87(2)(b) did not assault SGT Lee or any officer.

Because the pepper-spray still irritated § 87(2)(b)’s eyes and caused headaches, § 87(2)(b)’s sister, Sandra Rodriguez, took § 87(2)(b) to § 87(2)(b) Hospital in Forest Hills, Queens after she was released from Queens Central Booking on January 20, 2013.

Photo Viewing

On February 21, 2013, § 87(2)(b) presented seven photographs of her injuries. The first photograph, which was of the right side of her face, showed a dark area on the right cheekbone. § 87(2)(b) obtained this injury when the right side of her face made contact with the holding cell, as a result of SGT Lee pushing her. The second photograph, which was of the left side of § 87(2)(b)’s face, showed a slightly darker area on her left cheek. § 87(2)(b) obtained this injury when the left side of her face made contact with the holding cell, as a result of SGT Lee pushing her. The photograph also showed a red bump on her nose, which was caused by irritation from the pepper spray. The third photograph, which was of the right side of § 87(2)(b)’s face, showed a dark area on her right cheek. The fourth photograph, which was of § 87(2)(b)’s right elbow and the right side of her face, showed a bruise below her right elbow and a dark area on her right cheekbone. § 87(2)(b) obtained the bruise from SGT Lee grabbing her arm. The fifth photograph showed a bruise and a laceration on her arm. § 87(2)(b) obtained the bruise from SGT Lee grabbing her arm; however, she did not know how she obtained the laceration. The sixth photograph, which was the inside of § 87(2)(b)’s right arm, showed four dots, three of which formed a triangle. § 87(2)(b) stated that the dots were SGT Lee’s fingerprints as a result of him grabbing her arm. The seventh photograph was of § 87(2)(b)’s right arm and the right side of her face. The photograph showed a bruise and a laceration below her right elbow and a dark area on her right cheek bone. All the photographs were taken by § 87(2)(b)’s sister, Sandra Rodriguez, at § 87(2)(b) Hospital on January 20, 2013 between 2:00 p.m. and 3:00 p.m. (encl. 7g-n).

NYPD Statements:

Witness Officer: PO JOSEPH DIFILIPPI

- § 87(2)(b)
- *On January 18, 2013, PO Difilippi worked from 11:15 p.m. to 9:15 p.m. the following day and was assigned to Sectors C, D, and E. PO Difilippi worked with PO Arceo. The officers were in uniform and were assigned to a marked vehicle, vehicle number 3414.*

Memo Book

PO Difilippi wrote that he conducted a car stop on Junction Boulevard and Northern Boulevard and § 87(2)(b) was under arrest at 6:11 a.m. At 6:30 a.m., § 87(2)(b) was out of PO Difilippi's vehicle and was waiting for IDTU. At 9:30 a.m., the testing at the IDTU began. At 9:50 a.m., PO Difilippi and § 87(2)(b) were en route to the 115th Precinct stationhouse. § 87(2)(b) refused to blow into the breathalyzer machine. At 10:10 a.m., PO Difilippi and § 87(2)(b) arrived at the stationhouse. At 10:30 a.m., PO Difilippi completed the online arrest paperwork for § 87(2)(b)'s assault arrest as per SGT Lee. Then § 87(2)(b) was sent to § 87(2)(b) General Hospital. At 10:40 a.m., PO Difilippi completed the scratch copies of the online booking sheets. At 11:20 a.m., the complaint number for § 87(2)(b)'s DWI arrest was generated. At 11:26, the invoice for the vehicle voucher was completed. At 11:50 a.m., the arrest number for § 87(2)(b)'s DWI arrest was generated. At 12:10 p.m., the complaint number for § 87(2)(b)'s assault arrest was generated. At 12:45 p.m., PO Difilippi completed the complaint reports. At 1:20 p.m., an AIDED card was completed. At 1:30 p.m., the Interactive Court Affidavit Preparation System (ICAPS) was completed. At 2:30 p.m., the voucher for vehicle seizure forfeiture was completed. At 3:30 p.m., paperwork was faxed to the Assistant District Attorney. At 3:45 p.m., property inside § 87(2)(b)'s vehicle was sorted and released to § 87(2)(b)'s friend. At 5:30 p.m., the property in § 87(2)(b)'s vehicle that was sorted, which included multiple bags, shoes, toys, purses, dollar bills, loose change, tools, air fresheners, books, and floor mats, was given to § 87(2)(b). At 6:00 p.m., PO Difilippi faxed the vehicle seizure form and he spoke to the Assistant District Attorney, who said that she would start working on § 87(2)(b)'s case. At 7:40 p.m., PO Difilippi made copies of the paperwork for SGT Lee, as per SGT Lee. On the flysheet, PO Difilippi noted § 87(2)(b)'s name, address, date of birth, and contact numbers (encl. 10a-e).

Computerized Arrest Reports

On January 19, 2013, at approximately 6:14 a.m., § 87(2)(b) was arrested at Northern Boulevard and Junction Boulevard in Queens for DWI. The narrative stated that § 87(2)(b) was observed swerving in and out of lanes and not using signals. When PO Difilippi attempted to pull § 87(2)(b) over by activating the lights and sirens on his marked vehicle, § 87(2)(b) continued to drive approximately twelve city blocks. When § 87(2)(b) was stopped at a red light, PO Difilippi approached § 87(2)(b)'s vehicle and observed § 87(2)(b)'s bloodshot and watery eyes, heard her slurred speech, and smelled odor coming from § 87(2)(b)'s breath and body. PO Difilippi also observed an open container of alcohol inside § 87(2)(b)'s vehicle. On January 19, 2013, at approximately 10:00 a.m., § 87(2)(b) was arrested inside the 115th Precinct stationhouse, located at 92-15 Northern Boulevard in Queens, for assault of an officer. The narrative stated that while the officer attempted to lodge § 87(2)(b) she kicked, head butted, and spat in the officer's eyes, causing the officer pain and his eyes to burn (encl. 11a-l).

Criminal Court Complaint Report

According to the Criminal Court Complaint Report, § 87(2)(b) was charged with assault in the second degree, operating a motor vehicle while under the influence of alcohol or drugs, aggravated unlicensed operator of a motor vehicle, consumption of alcoholic beverages in a motor vehicle, driving by an unlicensed operator (encl. 12a-c).

AIDED

According to the AIDED report, while at the 115th Precinct stationhouse, § 87(2)(b) kicked, head butted, and spat at SGT Lee. ESU was not notified. (encl. 13a-b).

CCRB Statement

PO Difilippi was interviewed at the CCRB on March 26, 2012 (encl. 14a-d).

On January 19, 2013, PO Difilippi observed § 87(2)(b) speeding, driving through a red traffic light, and swerving between the lanes on Northern Boulevard. The turret lights and sirens were activated to indicate to § 87(2)(b) that she needed to pull over. § 87(2)(b) stopped at a red light, approximately twenty blocks away, at Junction Boulevard and Northern Boulevard. PO Difilippi and PO Arceo exited their vehicle and walked to § 87(2)(b)'s car, which was in the right lane. PO Difilippi and PO Arceo approached the driver's side of § 87(2)(b)'s car. PO Difilippi smelled alcohol, which smelled like vodka, and observed a cup without the lid, which was approximately twenty-four ounces, from a fast food restaurant in the center console. PO Difilippi did not know what kind of alcohol was in the cup. § 87(2)(b)'s eyes were bloodshot and watery, and she slurred her words. An officer, PO Difilippi did not remember who, instructed § 87(2)(b) to exit her car. PO Difilippi did not remember if § 87(2)(b) complied with that instruction. PO Difilippi and PO Arceo assisted in bringing § 87(2)(b) out of her car. § 87(2)(b) was brought to the rear of her car. An officer, PO Difilippi did not remember who, went over the radio to call for assistance in order for officers to bring the breathalyzer machine to the location. Once the machine was given to PO Difilippi and PO Arceo, those assisting officers remained at the scene throughout the entire incident. § 87(2)(b) refused to take the breathalyzer test. PO Difilippi did not remember how many times he instructed § 87(2)(b) to take the breathalyzer test before she eventually took the test. PO Difilippi could not recall § 87(2)(b)'s alcohol limit, but stated she was above the legal limit. PO Difilippi and PO Arceo brought § 87(2)(b) to the Intoxicated Driver Testing Unit (IDTU) at the 112th Precinct stationhouse to take a sobriety test. PO Difilippi and § 87(2)(b) remained at the IDTU for approximately three-and-one-half hours before going to the 115th Precinct stationhouse. § 87(2)(b) was transported to the 115th Precinct stationhouse; however, PO Difilippi did know in which vehicle § 87(2)(b) was placed in order to be transported.

While in front of the desk at the stationhouse, § 87(2)(b) who was handcuffed, acted disorderly, yelled, used profanity, and did not answer questions. PO Difilippi did not remember what questions were asked of § 87(2)(b). An unidentified female officer went to search § 87(2)(b) who continued to yell and moved her body back and forth to prevent the search from occurring. § 87(2)(b) said, "Why do you have to keep searching me?" PO Difilippi did not remember if SGT Lee told § 87(2)(b) to "shut up." SGT Lee, who was behind the desk, told § 87(2)(b) to let the officer do her job. Then § 87(2)(b) yelled at SGT Lee and used profanity toward him; however, PO Difilippi did not know the words used by § 87(2)(b). SGT Lee ordered an officer to place § 87(2)(b) in the holding cell, which was approximately twenty to twenty-five feet from where § 87(2)(b) stood. § 87(2)(b) would not move. SGT Lee walked around the desk and grabbed § 87(2)(b)'s bicep to escort her into the holding cell. PO Difilippi did not remember which arm SGT Lee grabbed. § 87(2)(b) may have complained about the tight grip around her arm. SGT Lee pulled § 87(2)(b)'s arm so she would walk to the cell. PO Difilippi did not see SGT Lee push her against the cell. PO Difilippi did not remember if § 87(2)(b) made contact with the cell door. PO Difilippi was not made aware of any injuries that § 87(2)(b) sustained. PO Difilippi did not remember if § 87(2)(b) complained of any injuries. PO Difilippi was presented with seven photographs of § 87(2)(b)'s injuries, sent by § 87(2)(b) (encl. 7g-n). PO Difilippi did not remember seeing those injuries.

SGT Lee instructed § 87(2)(b) to walk to the cell. § 87(2)(b) tried to stand still to prevent herself from walking to the cell. As SGT Lee pulled § 87(2)(b) to the holding cell, she

continued to yell and spat several times at SGT Lee. While in the holding cell area, § 87(2)(b) kicked SGT Lee in the legs, head butted SGT Lee in his face twice, and continued to spit. PO Difilippi did not know how many times § 87(2)(b) kicked SGT Lee. SGT Lee held § 87(2)(b) against the cell to prevent her from kicking and head butting him. § 87(2)(b)'s chest made contact with the cell. PO Difilippi did not know which side of § 87(2)(b)'s face made contact with the bars of the cell. § 87(2)(b) did not complain about being held against the cell. PO Difilippi did not remember at which point SGT Lee released his hold of § 87(2)(b).

The handcuffs could not be removed from § 87(2)(b) at this time because she continued to kick and spit. As SGT Lee attempted to open the door to the holding cell, § 87(2)(b) spat at SGT Lee several times and the saliva made contact with SGT Lee's eyes and mouth. While PO Difilippi was in a cell room, approximately twenty feet away from the holding cell, PO Difilippi saw SGT Lee pepper-spray § 87(2)(b) twice to prevent her from spitting. The pepper spray made contact with § 87(2)(b)'s face. § 87(2)(b) said the pepper-spray burned and she may have yelled.

§ 87(2)(b) was placed in the holding cell and SGT Lee called an ambulance for § 87(2)(b). SGT Lee's eyes were red, but he did not go to the hospital. PO Difilippi did not remember any more of SGT Lee's injuries. § 87(2)(b) continued to yell. SGT Lee instructed PO Difilippi to process an arrest for § 87(2)(b) for assault. SGT Lee called for the Emergency Service Unit (ESU) because the officers did not know how § 87(2)(b) would react after the ambulance arrived. Three officers from ESU, one of whom was female, arrived at the stationhouse. PO Difilippi did not see the interaction between the ESU officers and § 87(2)(b). PO Difilippi did not remember how long it took for the ambulance to arrive. § 87(2)(b) was brought to § 87(2)(b) Hospital by the ambulance. PO Difilippi did not know which officer accompanied § 87(2)(b) to the hospital.

Subject Officer: SGT JAMES LEE

- § 87(2)(b)
- *On January 19, 2013, SGT Lee worked from 6:55 a.m. to 3:52 p.m. and was assigned as the desk sergeant. SGT Lee worked alone and in uniform.*

Memo Book

SGT Lee had no memo book entries regarding this incident. SGT Lee was assigned as the desk officer at the time of the incident (encl. 15a-b).

Line of Duty Report

According to the Line of Duty Report, when SGT Lee escorted § 87(2)(b) to the holding cell, she kicked his left leg, head butted him in the face, and spit in his face, causing pain and irritation. SGT Lee was diagnosed with a contusion to the left leg and a scratch to the face. He refused medical attention (encl. 16a-b).

CCRB Statement

SGT Lee was interviewed at the CCRB on April 4, 2013 (encl. 17a-c). SGT Lee's statement was generally consistent with PO Difilippi's statement, with the following exceptions and general information.

PO Difilippi brought § 87(2)(b) who was handcuffed, from the IDTU at the 112th Precinct stationhouse to the 115th Precinct stationhouse for arrest processing. SGT Lee could tell that § 87(2)(b) was still intoxicated due to the smell of alcohol, bloodshot eyes, and lack of steadiness. § 87(2)(b) was also loud and belligerent. § 87(2)(b) was brought to the front desk by the arresting officer and SGT Lee sat behind the front desk. SGT Lee instructed an officer, whose name he could not recall, who was described as a white female, 5'5" to 5'6", who wore glasses, to search § 87(2)(b). At the time, the female officer had walked into the stationhouse to start her tour. As soon as the female officer put her hands on § 87(2)(b) began to yell and use profanity, such as "fucking touch me" and "fucking bitch, don't touch me." SGT Lee told § 87(2)(b) to calm down two to three times. The female officer also told § 87(2)(b) to calm down. Then § 87(2)(b) said "Fuck you" to SGT Lee, used other profanity toward SGT Lee, and moved her body. The female officer was unable to successfully search § 87(2)(b). PO Difilippi stood next to § 87(2)(b) and told § 87(2)(b) to calm down. PO Difilippi looked at SGT Lee and told SGT Lee that § 87(2)(b) had been acting in that manner since she was arrested.

Less than one minute later, SGT Lee walked around the desk and grabbed § 87(2)(b)'s right arm, near her armpit, to place § 87(2)(b) into a holding cell. § 87(2)(b) did not complain about the tight grip around her arm. § 87(2)(b) moved her right shoulder to push her body away from SGT Lee. PO Difilippi was next to SGT Lee in order to help him get § 87(2)(b) into the holding cell; however, SGT Lee was not sure if PO Difilippi grabbed § 87(2)(b)'s arm. SGT Lee held onto § 87(2)(b)'s arm to lead her into the holding cell area. As SGT Lee led § 87(2)(b) into the holding cell area, she kicked SGT Lee's legs more than two times and head butted SGT Lee in the left cheekbone once. SGT Lee told § 87(2)(b) to stop moving. § 87(2)(b) continued to yell, kick, and use profanity. After SGT Lee and § 87(2)(b) walked through the door that lead to the holding cell area, § 87(2)(b) was able to break free from SGT Lee's grasp. Then § 87(2)(b) turned around and spat in SGT Lee's eyes once. PO Difilippi backed away and § 87(2)(b) spat again. SGT Lee did not push § 87(2)(b) onto the cell door, but he held § 87(2)(b) against the bars of the holding cell to prevent her from spitting any further. SGT Lee placed his right forearm across the front of § 87(2)(b)'s upper body and head. § 87(2)(b)'s back was against the cell door. § 87(2)(b)'s face did not make contact with the cell door.

SGT Lee entered the holding cell to pull § 87(2)(b) into the cell; however, § 87(2)(b) continued to spit and SGT Lee did not want to remain in close proximity to her. Then SGT Lee went to the threshold of the holding cell, placed his hands near § 87(2)(b)'s shoulders, and pushed § 87(2)(b) away to get her into the holding cell. SGT Lee pushed § 87(2)(b) with enough force to place her into the holding cell, but did not push § 87(2)(b) with the intent to knock her down. Soon thereafter, § 87(2)(b) lunged out of the cell toward SGT Lee, the arresting officer, and one to two other officers, who SGT Lee did not recall, while spitting, and SGT Lee pepper-sprayed § 87(2)(b) in her upper body. SGT Lee held down the release button on the pepper-spray canister once for approximately two to three seconds. The stream that came out of the canister, which was described as blue and approximately three to four inches tall and one inch wide, was constant. SGT Lee had no time to give § 87(2)(b) any instructions prior to pepper spraying her. § 87(2)(b) backed away, sat down in the cell, and SGT Lee closed the cell door. § 87(2)(b) continued to use profanity. Officers checked on § 87(2)(b) periodically. After approximately five to ten minutes, § 87(2)(b) had calmed down. SGT Lee sustained bruises to his legs and face and his eyes were red and irritated. When the ambulance arrived, SGT Lee was given an ice pack, his eyes were flushed out, and he was given wipes. SGT Lee did not

go to the hospital. § 87(2)(b)'s eyes were flushed out and her face was wiped. Because § 87(2)(b) was still intoxicated, she was transported to § 87(2)(b) General Hospital and she was accompanied by the arresting officer. The Emergency Service Unit (ESU) was not called. A Medical Treatment of Prisoner form was prepared by PO Difilippi.

SGT Lee was presented with seven photographs of § 87(2)(b)'s injuries, sent by § 87(2)(b) (encl. 7g-n). SGT Lee did not see those injuries and stated that § 87(2)(b) did not complain of those injuries. The sixth photograph showed three dots on the interior portion of § 87(2)(b)'s right arm in a shape of a triangle and a fourth dot closer to the tricep. SGT Lee said § 87(2)(b)'s could have sustained those dots as a result of SGT Lee grabbing § 87(2)(b)'s arm, but was not sure how § 87(2)(b) sustained that injury. SGT Lee did not wear any rings on the day of the incident and did not know what caused the dots on § 87(2)(b)'s arm. § 87(2)(b) did not complain of any injuries.

Medical Records

§ 87(2)(b) was brought to § 87(2)(b) Hospital from the 115th Precinct stationhouse via ambulance on January 19, 2013 and was accompanied by PO Stapleton. The EMS worker noted that the right side of § 87(2)(b)'s face was red, but there were no contusions, swelling, lacerations, or bleeding. § 87(2)(b) had abrasions to her right arm. The physical exam at the hospital noted that there was swelling and tenderness to § 87(2)(b)'s right eye. Her eyes were washed with water. § 87(2)(b) was given a Tetanus Toxoid injection and was prescribed six hundred milligrams of Motrin.

§ 87(2)(b) went to § 87(2)(b) Hospital on January 20, 2013. § 87(2)(b) obtained a bruise; however, the medical records do not indicate the location of the bruise. § 87(2)(b) was prescribed thirty six hundred milligram tablets of Motrin for the pain (encl. 18a-s).

NYPD Documents

Command Log

According to the 115th Precinct command log, § 87(2)(b) was brought into the stationhouse at 10:00 a.m. on January 19, 2013. At 10:45 a.m., § 87(2)(b) was transported to § 87(2)(b) General Hospital and returned to the stationhouse at 4:25 p.m. At 3:30 a.m. on January 20, 2013, § 87(2)(b) was transported to Central Booking in vehicle number 5656. SGT Kenneth Braumann of the 115th Precinct verified § 87(2)(b)'s arrest. § 87(2)(b)'s physical condition was noted as being intoxicated (encl. 19a).

Medical Treatment of Prisoner Report

According to the medical treatment of prisoner report, § 87(2)(b) was pepper-sprayed at the 115th Precinct stationhouse. The report does not indicate any further injuries to § 87(2)(b) (encl. 20a).

Video of IDTU test

At 01:11, PO Croce asked § 87(2)(b) if she wanted to take the breathalyzer test and § 87(2)(b) refused to take the test. At 03:27, PO Croce explained to § 87(2)(b) that if she refused to take the breathalyzer test, or any portion of the test, it would result in the immediate suspension and revocation of her driver's license. At 03:51, PO Croce asked if § 87(2)(b) would take the breathalyzer test and § 87(2)(b) refused to take the test. At 04:07, § 87(2)(b) was asked if

she would take the physical test and she agreed to do so. At 09:43, § 87(2)(b) completed the tests (encl. 21a).

Prisoner Holding Pen Roster

According to the prisoner holding pen roster, Juan Gonzalez entered the holding cell at 3:16 a.m. and went to Queens Central Booking at 9:15 a.m. § 87(2)(b) entered the holding cell at 10:00 a.m. and was taken to § 87(2)(b) Hospital at 10:45 a.m. (encl. 22a-b).

Arrest for Incident and Disposition

- For case number § 87(2)(b) § 87(2)(b) pled guilty to second degree assault and driving while intoxicated on April 11, 2013 § 87(2)(b) (encl. 24a-d).
- § 87(2)(b)'s assault arrest has been sealed (encl. 24e).

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of February 22, 2013 with regard to the incident (encl. 23a).

§ 87(2)(b)

§ 87(2)(b)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3a).

Subject Officer CCRB History

- SGT Lee has been a member of the service for ten years and there is one substantiated CCRB allegation against him (encl. 2a).
 - SGT Lee received no disciplinary action for the substantiation of a property damage allegation for case 200702497.

Conclusion

Identification of Subject Officer

SGT Lee acknowledged physically interacting with § 87(2)(b)

Investigative Findings and Recommendations

Allegation A- Force: SGT James Lee used physical force against § 87(2)(b)

Allegation B- Force: SGT James Lee used pepper spray against § 87(2)(b)

§ 87(2)(b) stated that SGT Lee pushed her twice against a holding cell and pepper sprayed her twice without provocation. § 87(2)(b)'s medical records showed abrasions to her right arm, which are consistent with SGT Lee grabbing that arm. Photographs provided by § 87(2)(b) also showed a bruise to the right side of her face. PO Difilippi stated that when § 87(2)(b) spat, head butted, and kicked SGT Lee, she was held face first against the cell by SGT Lee, who pepper sprayed her to cease the spitting. SGT Lee stated that he held § 87(2)(b) against the holding cell, with her back to the holding cell, and pepper sprayed her after she lunged out of the holding cell. The Line of Duty Report and the AIDED documented that § 87(2)(b) spat, head

butted, and kicked SGT Lee. Those reports also documented that SGT Lee refused medical attention. § 87(2)(b) was ultimately charged with assaulting SGT Lee.

According to Patrol Guide Procedure 212-95, pepper spray is used in situations when the uniformed member of the service reasonably believes that it is necessary to protect one-self, or another from unlawful use of force (encl. 1a-c).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) A photograph of the right side of § 87(2)(b)'s face shows an injury; however, both officers denied seeing any injuries and denied that § 87(2)(b) complained of any injuries. The role that SGT Lee had in § 87(2)(b) obtaining that injury to her face is unknown.

§ 87(2)(b), § 87(2)(g)

Team: One

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date